IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/10/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mrs. Justice R. BANUMATHI

Criminal Appeal No. 1233 of 2002

1. Mohan @ Mohankumar,

2. Suresh

.. Appellants/Accused 1 and 2.

-Vs-

State by
Inspector of Police,
J-s, Sadras Police Station,
Tirukkalukkundram Taluk,
Kancheepuram District.

.. Respondent/Complainant.

Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against judgement passed by the Principal Sessions Judge, Chengalpattu in S.C.No. 46 of 1998 dated 20-6-2002.

For Appellants:- Mr. A. Natarajan.

For Respondent:- Mr. V.M.R. Rajendran, Addl.,
Public Prosecutor.

:JUDGEMENT
(Judgement of Court was made by P. Sathasivam, J.,)

Appellants are Accused 1 and 2 in Sessions case No. 4 6 of 1998 on the file of Principal Sessions Judge, Chengalpattu. They along with another accused by name Appu (3rd Accused), were convicted for offences under Sections 457, 341, 302 read with 34 I.P.C. and 392 I.P.C. and sentenced to undergo life imprisonment for the offence under Section 302 read with 34 I.P.C. and no separate sentences were awarded for the offences under Sections 457, 341

and 392 I.P.C.

2. The case of the prosecution is briefly stated hereunder:
a) The deceased by name Subramani aged about 46 years was a resident in Door No.7/3, Vanniar street, Sadras village. He worked as a Aluminium civil contractor in Indira Gandhi Atomic Power Project, Kalpakkam. Since his son met with an accident. For taking treatment at Madras, his injured son and his wife were temporarily staying at Madras. The deceased Subramani alone was staying in the house at Sadras. He was last seen at 9-30 P.M. on 11-9-97. Thereafter, he did not attend his office. At about 7-30 A.M. on 13-9-97 somebody came and enquired about the deceased Subramani. Since there was no response from the house of the deceased, the caller enquired P.W.1-Sunil, who is the neighbour of the deceased. The said Sunil on noticing that the cycle and the motor cycle of the deceased Subramani were parked in the ground floor, on suspicion, he verified the presence of the deceased through the rear side of his house and noticing that the rear door opened, P.W.1 went inside and saw the deceased Subramani lying in the hall. His hands and legs were found tied. Bureau was opened and dresses and other articles were scattered. On noticing the same, P.W.1 went to Sadras Police Station at 9 A.M. on 13-9-97 and gave a complaint to P.W.10-Sub Inspector of Police, Sadhurangapattinam. P.W.10 registered his complaint as Crime No. 554/97 under Section 302 I.P. C. He prepared Express first information report-Ex.P-17 and submitted copies of the same to the concerned Judicial Magistrate and higher authorities for taking further action.

b) On receipt of the Express first information report-Ex.P-17, P.W.11-Inspector of Police, Thirukazhukundram, rushed to the scene of occurrence at 10-15 A.M. on 13-9-97. He prepared a rough sketch-Ex.P-18, and observation mahazar-Ex.P-11 in the presence of witnesses. On his request, P.W.7-finger print expert came to the spot and traced out the finger prints found there. P.W.11 conducted inquest on the body of the deceased in the presence of panchayatdars. Ex. P-19 is the inquest report. On receipt of Ex.P-20 complaint from P.W.20, wife of the deceased, he altered the section of law into 302 read with 380 I.P.C. The altered first information report is Ex. P-21 . The body was sent for post-mortem. P.W.6-Doctor conducted postmortem on the body of the deceased Subramanian. Ex.P-13 is the postmortem report. He also enquired the Doctor and obtained a statement. He recovered blood-stained cement, bed sheet, towel, underwear, banian etc., under mahazar-Ex.P-12 in the presence of witnesses. On 14-9-97, P.W.11 seized full hand shirt, banian, lungi, iron box, nylon wire, and telephone wire. On 15-9-97 around 12 noon he arrested A-1 near Sadurangapattinam bazaar. He made a voluntary confessional statement, the admissible portion of which is Ex. P-3. Pursuant to ExP-3, he produced M.O.9 from his house, which was recovered by P.W.11 under Ex.P-4. Then A-1 took P.W.11 to the house of P.W.5 and identified M. Os.1, 6, 7, 8, which were recovered under mahazar Ex.P-6. A-1 also identified A-2, who also was arrested. A-2 also made a voluntary confessional statement in the presence of witnesses, the admissible portion of which is Ex.P-7. On the basis of his admission, M.O.2 was seized under mahazar-Ex.P-3. Both A-1 and A-2 identified A-3. P.W.11 arrested A-3 at 9-20 P.M. He also made a voluntary confessional statement, the admissible portion is Ex.P-9. Based on Ex.P-9, M.Os.3, 4 and 5 were recovered under Ex.P-10

mahazar in the presence of witnesses. All the three accused were remanded to custody. Their finger prints were sent to finger print expert for his opinion. He also arranged to send all the seized articles to the Court on the same day and sent some of the M.Os. for chemical examination through Judicial Magistrate's Court. On receipt of chemical analysis report and serological report, and after examination of all the witnesses, and completion of investigation, he filed charge sheet under Sections 457, 341, 302 and 392 I.P.C.

3. The prosecution has examined as many as 11 witnesses as P.Ws.1 to 11 and marked Exs. P-1 to P-27 and M.Os.1 to 37. When the accused were questioned under Section 313 Cr.P.C., with regard to the incriminating circumstances available from the evidence of prosecution witnesses, they denied the offences and they have not examined any witness on their side. The learned Principal Sessions Judge, after accepting the case of the prosecution, found the accused 1 to 3 guilty for the offences under Sections 457, 341, 302 read with 34 and 392 I.P.C. and convicted and sentenced them to undergo life imprisonment for the offence under Section 302 read with 34 I.P.C. and no separate sentences were awarded for the offences under Sections 457, 341 and 392 I.P.C. Hence the present appeal by Accused 1 and 2.

4. Heard Mr. A. Natarajan, learned counsel for the appellants and Mr. V.M.R. Rajendran, learned Additional Public Prosecutor for respondent.

5. Mr. A. Natarajan, learned counsel appearing for the appellants, after taking us through the materials placed before the trial Court, would contend that there is no direct evidence available to connect the appellants with the crime. He also contended that the chain of events were not properly connected and the prosecution has not proved its case beyond all reasonable doubts. According to him, in the absence of specific permission from the learned Magistrate, the finger prints taken from the accused and the opinion of the finger print expert cannot be relied upon by the trial Court. He further contended that first information report and the inquest report were reached the Court only on 15-9-97, whereas the occurrence had taken place on 13-9-97. He further contended that the trial Court committed an error in convicting the appellants based on the recovery of stolen articles. It is not free from suspicion about the manner in which the arrest and recoveries were made and bringing of the mahazar witnesses from Sadras Kalpakkam to Chennai creates doubt over the prosecution theory. In other words, according to him, the prosecution failed to establish the guilt of the accused beyond all reasonable doubts and the entire case is based on circumstancial evidence. On the other hand, learned Additional Public Prosecutor, after taking us through the materials, would contend that it is a case of murder for gain. Since the prosecution has established the possession of M.Os.1 to 9 with A-1 to A-3 and also in the house of P.W.5, who is a friend of A-1, in the absence of proper explanation for keeping those properties, the learned trial Judge is right in convicting the accused.

6. We have carefully considered the rival submissions, evidence on record and the judgement of the trial Court.

7. At the foremost, let us consider the evidentiary value of the statement made by Finger Print Expert-P.W.7 and his report-Ex.P-14. It is the argument of the learned counsel for the appellants that inasmuch as the investigation officer has not obtained permission from the Court under sections 4 and 5 of the Identification of Prisoners Act, 1920 and summoned finger print expert-P.W.7 and utilised his service, his evidence and the ultimate report has no evidentiary value and the same cannot be relied on. It is true that as per Sections 4 and 5 of the Identification of Prisoners Act, 1920, any person who has been arrested in connection with an offence punishable with rigorous imprisonment for a term of one year or upwards, if so required by a police officer allowed his measurements to be taken or photograph to be taken on the application of the police officer, an order has to be made by the Magistrate concerned. Admittedly, in the case on hand, the Inspector of Police-P.W.11 has not obtained permission from the Court concerned, however, the thumb impression of the accused were taken down by the Inspector of Police-P.W.11 during investigation after the arrest of the accused and when they were in the Police Station. This objection was raised before the learned trial Judge. Considering the materials/evidence placed on the side of the prosecution, the learned Judge has come to a conclusion that even if he eschewes the evidence of P.W.7 and his report-Ex.P-14, still there are ample evidence to link the accused with the commission of the crime. As rightly observed by the learned trial Judge, in view of the abundant materials on the side of the prosecution, we are of the view that whether the provisions of Sections 4 and 5 of the said Act were duly complied with or not? is only academic in nature and we need not venture further on this aspect.

8. It is the definite case of the prosecution that M. Os.1 to 9 stolen from the house of the deceased Subramani have been recovered from the accused when they were arrested on the basis of confessional statement under proper mahazars-Exs. P-4 to P-6, P-8 and P-1 0. It is seen that P.W.11-investigation officer arrested the first accused on 15-9-97 at Sadras bus-stand and he gave Ex.P-3 confessional statement in the presence of P.W.3-Pachaiyappan and one Rajendran and based on the same, P.W.11 has recovered Philips Tape Recorder with Radio-M.O.1 under mahazar-Ex.P-6; colour T.V.-M.O.6; remote controlM.O.7; and silver key chain-M.O.8 under mahazar-Ex.P-5 from the house of P.W.5-Anandan where they were hidden by the first accused and M.O.9-silver kuthu vilakku under mahazar-Ex.P-4 from the house of first accused in the presence of witnesses-Pachayappan and Rajendran. P.W.1 also arrested the second accused identified by the first accused at Royapuram Powerkuppam 2nd floor, first block and recorded his (A-2's) confessional statement, the admissible portion of which is Ex.P-7 in the presence of witnesses-Pacnahappan and Rajendran and based on the same, P.W.1 recovered M.O.2-Timex wrist watch near the house of the second accused. P.W.11 also arrested third accused Appu at 3rd Block, First floor No.24, identified by A-1 and A-2. He recorded the confessional statement of A-3, the admissible portion of which is Ex.P-9, in the presence of witnesses-Pachayappan and Rajendran and on the basis of the same, P.W.11 recovered M.O.3-black colour rexin zip bag; M.O.4-Citizen wrist watch; and M.O.5-Titan watch under mahazar-Ex.P-10 from the house of the third accused where they were hidden.

9. It is also relevant to refer the evidence of P.W.5 who is a resident of Sadras. He admitted that first accused is his friend. He is a poojari in an Amman temple at Pudupattinam Sadras. According to P.W.5, A-1 used to visit frequently. He further stated that in the morning of 12-9-97 A-1 visited his house and informed him that on 11-9-97 after murdering the contractor Subramani he and two others robbed his house and taken tape recorder, silver key chain, T.V., remote, etc., and sought permission to keep those articles. Though P.W.5 initially resisted, due to the threat came from A-1, he acceded to the request of A-1. Those articles were recovered on 15-9-97 on identification by A-1 in the presence of Pachayappan and Rajendran under mahazar Ex.P-5. P.W.5 has also admitted that the house of the deceased Subramani situated behind his house and M.Os.6 to 8 were recovered from his house by the police. Though in cross-examination P.W.5 has stated that A-1 has not turned up after the death of Subramani, in the light of his earlier statement and recovery of M.Os.6 to 8 on identification of A-1 in the presence of witnesses under proper mahazar, there is no reason to disbelieve his version. Likewise, on the arrest of A-2 and A-3 by P.W.11, based on their confessional statement, M.O.2, M.O.3 to M.O.5 were recovered after proper identification by them under proper mahazars in the presence of witnesses. In the light of the voluntary confessional statement which led to the recovery of the stolen articles, namely, M.Os.1 to 9 at different places, including from the house of P.W.5 in the presence of independent witnesses and by proper mahazars, we are satisfied that the accused 1 to 3 have connection with the stolen articles and the prosecution has fully established its case by placing acceptable legal evidence.

10. Now let us consider the explanation, if any, from the side of the accused for possession of M.Os.1 to 9. With reference to the incriminating evidence, when all the 3 accused questioned under Section 313 Cr.P.C., except stating that it is a false case foisted on them, they have not offered any explanation for possession of M.Os.1 to 9. Admittedly, the appellants did not examine any one in support of their plea. In this regard, learned Additional Public Prosecutor very much relied on a decision of the Apex Court in Praveen Kumar v. State of Karnataka, reported in 2003 (11-12) SBR 538, wherein Their Lordships have held that fact of ornaments belonging to the victim being in possession of appellant/accused immediately after murder would lead to an inference in the absence of any explanation that the appellants/accused must have robbed those jewelleries from victim and in that process committed murder of victim.

11. In Baiju v. State of M.P., reported in AIR 1978 Supreme Court 522, Their Lordships have held that unexplained possession of stolen articles can be taken to be presumptive evidence of the charges of murder as well. The following observation in para 13 is relevant:

"13.....As has been held by this Court in Wasim Khan v. The State of Uttar Pradesh 1956 SCR 191: (AIR 1956 SC 400), recent and unexplained possession of stolen articles can well be taken to be presumptive evidence of the charge of murder as well. A similar view has been taken in Alisher v. State of Uttar Pradesh (1974) 4 SCC 254: (AIR 1974 SC 1830)."

12. In Gulab Chand v. State of M.P., reported in 1995 Supreme Court Cases (Cri) 552, the following conclusion in para 4 is relevant:

"4.....In our view, it has been rightly held by the High Court that the accused was not affluent enough to possess the said ornaments and from the nature of the evidence adduced in this case and from the recovery of the said articles from his possession and his dealing with the ornaments of the deceased immediately after the murder and robbery a reasonable inference of the commission of the said offence can be drawn against the appellant. Excepting an assertion that the ornaments belonged to the family of the accused which claim has been rightly discarded, no plausible explanation for lawful possession of the said ornaments immediately after the murder has been given by the accused. In the facts of this case, it appears to us that murder and robbery have been proved to have been integral parts of the same transaction and therefore the presumption arising under Illustration (a) of Section 114 Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her ornaments....."

Though learned counsel for the appellants contended that mere recovery of articles from the appellants are not sufficient to connect them with the crime, in the light of the principles laid down in the above decisions and in view of the factual details narrated above, we are unable to accept his argument. Inasmuch as the possession of articles by the accused were not explained, and considering the fact that the accused are not affluent enough to possess the said ornaments, the circumstances and presumption lead to a conclusion that the accused committed the offences of murder and robbery.

13. Learned counsel for the appellants would submit that though Ex.P-1 complaint was made by P.W.1 at 9 A.M. on 13-9-97, the printed first information report reached the Court only at 4.45 P. M. on 15-9-97. This contention is liable to be rejected since the perusal of Ex. P-17 shows that the learned Magistrate acknowledged the first information report at 4.45 P.M. on 13-9-97 itself and not on 15-9-97 as claimed by the learned counsel for the appellants. The complaint Ex.P-2 given by S.P. Visalakshi, wife of the deceased was received at 9 A.M. on 15-9-97 and the same was also sent to the Court on the same day. It is also brought to our notice that the inquest report also reached on the same day i.e., on 13-9-97, hence there is no delay in sending the first information report and inquest report to the Court as claimed. As a matter of fact, when the investigation officer was cross-examined, no question was put on him as to how the delay occurred in sending the first information report to the Magistrate. Even if there is any lapse on the part of the investigation officer, as observed in Sahdeo and others v. State of U.P., reported in 2004 (7) SBR 185, the prosecution theory cannot be rejected for the same.

14. Regarding the cause of death, as per the evidence of P.W.6-Doctor and Ex.P-13-Post-mortem certificate, the deceased would appear to have died due to compression force applied on the antero-posterior surface of neck resulting in spinal column injury sustained by him. The details mentioned in the post-mortem certificate clearly show that the death of the deceased was homicidal. P.W.1 is a neighbour who made Ex.P-1 complaint on 13-9-97. His

evidence discloses that the deceased Subramanian was residing in the next house for the past 1 = years and when some one came in search of the deceased at 7.30 A.M. on 13-9-97, that there was no response when they knocked at the doors of Subramani's house, that he along with his neighbour got into Subramani's house verandah, knocked at the door and that it was not opened. He found the back door was open. He has gone to the back side house through the back side wall and found Subramanian lying in the hall both his hands and legs tied, bureau was opened and clothes were scattered. He also stated that the deceased Subramanian was murdered by tying both of his hands and legs and his father had seen him lastly on 11-9-97 at 9-30 P.M. along with his dog. We have already noted that the stolen articles were recovered after proper identification by the accused and it tallied with the complaint-Ex.P-2 given by the wife of the deceased. All these evidence and materials would show that the accused had stolen M.Os.1 to 9 from the house of the deceased Subramanian on 11-9-97 after 9.30 P.M. Accused 1 to 3 have not accounted for possession of such articles i.e., M.Os.1 to 9 belonging to the deceased Subramanian and his wife-Visalakshi-P.W.3. The materials also clearly show that during the course of the said transaction, the accused entered his house, who was alone at the relevant time and restrained him by tying his hands and legs with the telephone wire, iron box wire and nylon ropes and by covering his mouth and nose with the piece of bed sheet and murdered him and committed robbery by stealing the Mateiral Objects. The learned trial Judge on consideration of all these aspects rightly found the accused 1 to 3 guilty for the offences under Sections 457, 341, 302 read with 34 I.P.C. and 392 I. P.C. Inasmuch

as it is a case of murder for gain, the learned Sessions Judge has not shown any leniency to the accused. We are in agreement with the conclusion arrived at by the learned Sessions Judge.

15. In the light of what is stated above, we do not find any merit in the appeal; consequently the same is dismissed.

R.B.
Index:- Yes.
Internet:- Yes.

1. The Principal District and Sessions Judge, Chengalpattu.

2. The Inspector of Police, J-2 Sadras Police Station,
Tirukkalukkundram Taluk, Kancheepuram District.

3. The Superintendent, Central Prison, Chennai.

4. The Public Prosecutor, High Court, Madras.

5. The District Collector, Chengalpattu.

6. The Director General of Police, Mylapore, Chennai-4.